

# KENTUCKY ADMINISTRATIVE REGULATIONS OF THE KENTUCKY REAL ESTATE COMMISSION

In accordance with the laws of the Commonwealth, the following regulations have been approved by the Legislative Research Commission:

## **201 KAR 11:011. Definitions for 201 KAR Chapter 11**

RELATES TO: KRS 324.010(1), 324.046(1), 324.111(1), (2), (3), (4), (6), 324.117(1), (5), 324.160(4)(j), (m), (r), 324.410(1), 324.420(1), (2), (3), (4), (5)

Section 1. Definitions.

- (1) "Academic credit hour" means:
  - (a) One (1) college semester hour; or
  - (b) Sixteen (16) fifty (50) minute hours of actual classroom attendance.
- (2) "Contract deposit" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property after:
  - (a) The offer or counteroffer is accepted; and
  - (b) An executory contract exists.
- (3) "False, misleading, or deceptive advertising" means an advertisement that is prohibited pursuant to KRS 324.117(1) because the advertisement:
  - (a) Is contrary to fact;
  - (b) Leads a person to a mistaken belief or conclusion; or
  - (c) Knowingly made a representation that is contrary to fact.
- (4) "Fraud" or "fraudulent dealing" means a material misrepresentation that:
  - (a) Is:
    1. Known to be false; or
    2. Made recklessly;
  - (b) Is made to induce an act;
  - (c) Induces an act in reliance on the misrepresentation; and
  - (d) Causes injury.
- (5) "Guaranteed sales plan" means an offer or solicitation:
  - (a) To guarantee the sale of an owner's real estate; or
  - (b) To guarantee the purchase of the owner's real estate if the owner's real estate is not sold by the broker.
- (6) "Prize" means an item of value that is:
  - (a) Offered to a prospective purchaser on a condition set forth in the offer to the prospective purchaser; and
  - (b) Not a complimentary:
    1. Refreshment, including a soft drink or snack, that is offered to the general public; or
    2. Gift that:
      - a. Has a value less than \$100;
      - b. Is given to the purchaser at or after the closing at which the purchaser's purchase of the real estate was consummated; and
      - c. Was not offered prior to closing.
- (7) "Required disclosure" means:
  - (a) In print advertising, that the disclosure shall be in letters at least twenty-five (25) percent the size of the largest letters in the advertisement;
  - (b) In radio advertising, that the disclosure shall be verbal and clearly understandable; and
  - (c) In television advertising, that the disclosure shall:
    1. Be verbal and clearly understandable; or
    2. Be written and appearing on the screen at least three (3) seconds for the first line of lettering and one (1) second for each additional line of lettering, and in letters:
      - a. Which are eighteen (18) video scan lines in size for letters which are all upper case; or
      - b. Which are twenty-four (24) video scan lines in size for upper case capitals if upper case capitals and lower case letters are used.

- (8) "Without unreasonable delay" means within three (3) business days of the creation of an executory contract for the sale or lease of real property.

## **201 KAR 11:030. License cancellation; reasons for**

RELATES TO: KRS 324.310, 324.330

Section 1. A license shall be automatically cancelled if the licensee fails to promptly notify the commission, in writing, of any of the changes listed in KRS 324.330 (1) and (2).

## **201 KAR 11:045. Written offers to be submitted to owner-client, agreements to provide brokerage services, licensee duties**

RELATES TO: KRS 324.160(4)(w)

Section 1. If a licensee has entered into a written listing agreement or any other written agreement under the terms of which the licensee agrees to provide one (1) or more real estate brokerage services for the owner of the property to be brokered by the licensee, the licensee shall, at minimum:

- (1) Accept delivery and submit to his principal, owner-client, or customer, without delay, all written offers to lease or purchase the real estate that is the subject of the written agreement between the licensee and his principal, owner-client, or customer;
- (2) Accept all earnest money deposits that are presented to him or her by other licensees involved in the lease or purchase of the real estate that is the subject of the written agreement between the licensee and his principal, owner-client, or customer;
- (3) Assist his or her principal, owner-client, or customer in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to offers and counteroffers that are involved in the lease or purchase of the real estate that is the subject of the written agreement between the licensee and his principal, owner-client, or customer, until a lease or purchase agreement is signed and all contingencies that are satisfied or waived; and
- (4) Answer his or her principal's, owner-client's, or customer's questions relating to offers, counteroffers, notices, and contingencies that are involved in the lease or purchase of the real estate that is the subject of the written agreement between the licensee and his principal, owner-client, or customer.

Section 2. Each licensee, who represents a prospective purchaser, shall, without delay, submit all written offers to lease or purchase real estate from the licensee's prospective purchaser-client or customer to the owner of the property or to the licensee who has entered into any written agreement with the property owner-client or customer to provide one (1) or more real estate brokerage services for the property owner-client or customer for a fee, compensation or other valuable consideration.

Section 3. Failure to comply with Section 1 or 2 of this administrative regulation shall constitute gross negligence and shall be subject to sanctions under KRS 324.160(4)(w).

## **201 KAR 11:062. Retention of brokers' records**

RELATES TO: KRS 324.111, 324.160(6), 324.360

Section 1. A brokers shall preserve, for five (5) years following its consummation, records in one (1) file relating to any real estate transaction, which shall include:

- (1) Any written offers to lease or purchase real estate;
- (2) The acquisition of and disbursement of any monies;
- (3) Listing and sales contracts;
- (4) Closing sheets;
- (5) Property disclosure forms; and
- (6) Agency disclosure forms.

**201 KAR 11:090. Instruments prepared by broker; disposition**

RELATES TO: KRS 324.160(4)(r)

Section 1. At the time of signing all instruments, a real estate broker shall deliver a copy of all instruments to all parties executing the instruments where the instrument has been prepared by the broker or under his supervision.

**201 KAR 11:095. Closing statements**

RELATES TO: KRS 324.160(4)(r), (w)

Section 1. A real estate broker shall furnish a debit and credit type closing statement to a buyer and seller upon closing a real estate transaction if the financial institution or the attorney involved in a real estate transaction fails to furnish a closing statement.

**201 KAR 11:100. Exclusive listing contract; continuation**

RELATES TO: KRS 324.160

Section 1. No real estate broker shall be a party to an exclusive listing contract which shall contain an automatic continuation of the period of such listing beyond the fixed termination date set forth therein.

**201 KAR 11:105. Owner's consent and authorization**

RELATES TO: KRS 324.117(1),(4), 324.160(4)(w), (6)

Section 1. A real estate broker shall not offer real estate for sale or lease without the consent of the owner. If promoting or advertising the real estate to the general public, the broker shall have a written listing agreement signed by the owner. A buyer's agent may advertise or promote his or her participation in the sale after a binding contract is created.

Section 2. A sign shall not be placed on any property by a real estate licensee without the written consent of the owner.

Section 3.

- (1) In accordance with KRS 324.117(4), a real estate property print advertisement of a licensee, or an offer or solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease, shall include the name of the real estate company where the licensee's license is held or the name of the real estate company's principal broker with whom the licensee is affiliated.
- (2) If the advertisement includes the name of the real estate company's principal broker, the principal broker's name shall include his or her title as principal broker or be followed by any other clear designation of his or her status as a broker.
- (3) The requirements in this section shall apply to advertisements for listed property only.

Section 4.

- (1) An advertisement by a licensee shall be approved by the principal broker with whom the licensee is affiliated or by an individual designated by the principal broker to approve the advertisement.
- (2) A principal broker shall require his or her licensee to:
  - (a) Discuss with the property owner-client the advertising requirements of KRS 324.117;
  - (b) Provide the owner-client with written notice of these advertising requirements; and
  - (c) Obtain the owner-client's written agreement to comply with the advertising requirements.

Section 5. A licensee may advertise public information, such as sales price, or properties that have sold and closed, even if the licensee did not have a written listing agreement on the property.

**201 KAR 11:110. Exclusive authority retained by original broker**

RELATES TO: KRS 324.160

Section 1. No real estate broker shall induce any party to a contract or sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract with another principal.

**201 KAR 11:115. Auction obligations**

RELATES TO: KRS 324.160

Section 1. Any real estate broker who advertises real property at absolute auction is obligated to the public to sell said property to the highest bona fide bidder on the day of the auction.

**201 KAR 11:121. Improper conduct**

RELATES TO: KRS 324.010(3), 324.160(4), (f), (l), (m), (o), (w), (v), (5), (7)

Section 1. The following shall be improper for any licensed agent:

- (1) To accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services.
- (2) (a) To offer, either through advertising, direct contact, or by others, to the general public, any prize, money, free gift, rebate or thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
- (b) It shall not be improper conduct to disseminate information:
  1. About the fee or other compensation the licensed agent agrees to charge for his or her services; or
  2. About inducements offered by the licensed agent's client.

***This subsection, 201 KAR 11:121, Section 1(3) contains substantial errors and will not be enforced. The Commission is seeking to address this situation.***

- (3) It shall not be improper conduct to:
  - (a) Advertise the fee or other compensation the licensed agent agrees to charge for his services;
  - (b) Advertise or distribute goods or services offered by others;
  - (c) Distribute marketing materials bearing the name or logo of the licensee or licensees broker or company including but not limited to, matchbooks, magnets, pens, calculators, umbrellas, or calendars having a cost of not more than ten (\$10.00) dollars per item;
  - (d) Pay for refreshments or the cost of meals consumed by clients, customers or prospective clients or customers;
  - (e) Present any gift that does not exceed a cost of \$100.00 at or after closing to the participants in that closing;
  - (f) Offer a prize or free gift at an event such as a fair, trade exposition, or community event so long as such advertising is done only at the specific event and the cost of the prize or free gift does not exceed \$500.00 per event per branch office; or
  - (g) Offer, in a one-on-one situation, to provide anything of value for a client or customer, so long as it is disclosed in writing and signed by the licensee and his or her client or customer.
- (4) To refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the agent, or with the agent's company, without the written and signed direction of the owner. Nothing herein shall be construed to permit otherwise unlawful discrimination.
- (5) To fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client:
  - (a) Loyalty;
  - (b) Obedience to lawful instructions;
  - (c) Disclosure;
  - (d) Confidentiality;
  - (e) Reasonable care and diligence;
  - (f) Accounting.
- (6) To advertise guaranteed sales plan without required disclosure of:
  - (a) Whether a fee is charged for participation;
  - (b) Whether the real estate shall meet qualifications for participation;
  - (c) Whether the purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party; and

- (d) Whether the owner of the real estate shall purchase other real estate listed for sale by the licensee or his designee.
  - 1. In print advertising, that the disclosure shall be in letters at least twenty (25%) the size of the largest letters in the advertisement; and
  - 2. In radio advertising, that the disclosure shall be verbal and clearly understandable; and
  - 3. In television advertising, that the disclosure shall:
    - a. Be verbal and clearly understandable; or
    - b. Be written and appearing on the screen at least three (3) seconds for the first line of lettering and one (1) second for each additional line of lettering and in letters:
      - (i) Which are eighteen and (18) video scan lines in size for letters which are all upper case; or
      - (ii) Which are twenty four (24) video scan lines in size for upper case capitals when upper case capitals and lower case letters are used.
- (7) To violate a statute or administration regulation governing brokers, sales associate, or real estate transactions.
- (8) To serve in the dual capacity of a real estate licensee and loan originator if the real estate licensee, while acting in that capacity:
  - (a) Fails to disclose this dual role in writing and fails to indicate in that disclosure that the licensee will receive additional payment for the loan origination activities;
  - (b) Fails to contact the Department of Financial Institutions to register and pay the one (1) time fee for engaging in loan origination, if the licensee is engaged in loan origination as a part of his or her real estate activities to assist his or her real estate clients in obtaining financing; or
  - (c) Receives payment but fails to perform the requirement in subparagraph one of this paragraph, plus at least five (5) of the remaining thirteen (13) specific activities listed below, as outlined by the Department of Housing and Urban Development and as set out in the Real Estate Settlement Procedures Act Statement of Policy 1999-1:
    - 1. Taking information from the borrower and filling out the application;
    - 2. Analyzing the prospective borrower's income and debt and pre-qualifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford;
    - 3. Educating the prospective borrower in the home buying and financing process, advising the borrower about the different types of loan products available and demonstrating how closing costs and monthly payments could vary under each product.
    - 4. Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process;
    - 5. Initiating/ordering verifications of employment and verifications of deposits;
    - 6. Initiating/ordering requests for mortgage and other loan verifications;
    - 7. Initiating/ordering appraisals;
    - 8. Initiating/ordering inspections or engineering reports;
    - 9. Providing disclosures; (truth in lending, good faith estimate, others) to the borrowers;
    - 10. Assisting the borrower in understanding and clearing credit problems;
    - 11. Maintaining regular contact with the borrower, realtors, lender, between application and closing to apprise them of the status of the application and gather any additional information as needed;
    - 12. Ordering legal documents;
    - 13. Determining whether the property was located in a flood zone or ordering such service; and
    - 14. Participating in the loan closing;
- (d) Requests or receives compensation that is not commensurate with the actual work performed; or

(e) Requests or receives compensation for work that is not actually performed by him or her.

- (9) A broker licensed in Kentucky to aid, abet, or otherwise assist any individual who is not actively licensed in Kentucky in the practice of brokering real estate in this state. This prohibition shall include a Kentucky broker assisting any unlicensed individual with the listing, selling, leasing or managing of any Kentucky property or assisting an unlicensed individual in representing any buyer or lessee seeking property in Kentucky. An unlicensed individual shall include an individual who may be affiliated with a national franchise and may have a license in another state but who does not have an active Kentucky license

#### **201 KAR 11:135. Standards for filing a sworn statement**

RELATES TO: KRS 324.045, 324.046(3), 324.160(4)(a), (v)

Section 1. Any affiant found to have misrepresented facts in any sworn statement shall be subject to disciplinary proceedings by the commission and the commission may seek a criminal indictment for perjury.

#### **201 KAR 11:145. Sales associate's duties when terminating affiliation with broker**

RELATES TO: KRS 324.010(14), 324.160(4)(g), (v), 324.310

Section 1. Unless there is a written contract stipulating otherwise, a real estate salesman shall, upon termination of his affiliation with a real estate broker, immediately turn over to the broker any and all listing information obtained during his affiliation whether the information was originally given to him by his broker or copied from the records of the broker or acquired by the salesman during his affiliation.

#### **201 KAR 11:147. Procedure for license retention when sales associate released by broker**

RELATES TO: KRS 324.010(15), 324.160(4)(u), 324.310, 324.330

Section 1.

- (1) Upon receipt, by regular mail, from the principal broker, of the released license for a sales associate pursuant to KRS 324.310(1), the commission shall notify the sales associate by regular mail at his or her last resident address on file at the commission office that, within thirty (30) days of the date of the release letter, the associate shall:
  - (a) Reaffiliate with another broker; or
  - (b) Request by letter that his or her license be placed in escrow.
- (2) Failure by the sales associate to comply with the order issued by the commission pursuant to subsection (1) of this section shall:
  - (a) Be a violation of KRS 324.160(4)(u); and
  - (b) Result in the cancellation of the associate's license.

#### **201 KAR 11:170. Private school approval**

RELATES TO: KRS 324.010(7), 324.046(1), (2)

Section 1.

- (1) To apply for certification as an approved real estate school or to renew certification, a real estate school shall submit a:
  - (a) Completed Application for an Approved Real Estate School, including the information required concerning curriculum, instructors, and educational materials and policies;
  - (b) Copy of the Certificate of Approval from the State Board for Proprietary Education or Kentucky Department of Education, if applicable;
  - (c) Sample schedule to outline how a course will be presented;
  - (d) Completed course outline for each course, which shall include:
    - 1. A Real Estate Instructor Application for each instructor, as required by 201 KAR 11:175;
    - 2. A copy of a contract or agreement signed by the student which outlines the class schedule, grading system, and attendance requirements; and
    - 3. A copy of the written material, other than the textbook or real estate license law manual, which the instructor will use in the classroom;
  - (e) Sample copy of a school brochure or information sheet promoting the school;

- (f) Copy of legal documentation required to support an answer, if applicable; and
- (g) A sample copy of an official transcript from the school.
- (2) An approved real estate school shall include a statement in the school application that a criminal conviction may prevent an applicant from qualifying for licensure under KRS 324.045. Failure to do so may result in suspension of an approved school's certification until the information is included in the application.
- (3) An approved school shall notify the commission within ten (10) days of a material change in the information originally furnished on the application or in an attachment to the application.
- (4) A renewal application shall be submitted by November 1 of each year.

Section 2. The curriculum for an approval real estate school shall:

- (1) Include a minimum of three (3) academic hours per course;
- (2) Be conducted for a maximum of no more than seven (7) hours during a twenty-four (24) hour period; and
- (3) Consist of a course containing the topics listed in the Topics Prescribed by the Real Estate Commission.

Section 3. An approved real estate school shall not:

- (1) Advertise in conjunction with the business of a broker or a brokerage firm; or
- (2) Discuss, induce, or promote affiliation with a broker or brokerage firm.

Section 4.

- (1) An approved real estate school shall maintain accurate and permanent records on each student enrolled in a course.
  - (a) A permanent record shall include each student's record of courses completed or attempted, academic hours awarded, and final grades.
  - (b) A Certificate of Completion shall be:
    - 1. Included in the permanent records of each student; and
    - 2. Mailed to each student upon completion of a course.
- (2) A temporary record shall:
  - (a) Be maintained for three (3) years; and
  - (b) Include student attendance records and test scores.
- (3) An approved real estate school shall notify the commission within five (5) days of the beginning of a prelicense course.

Section 5. An approved real estate school shall permit an inspection and monitoring by the commission or its designee to evaluate an aspect of the administration or operation of the school.

Section 6. Private school approval shall be withdrawn if the commission determines that:

- (1) Information contained on the application or renewal is inaccurate or misleading; or
- (2) The establishment or conduct of the school is not in compliance with this administrative regulation or the instruction is so deficient as to impair the value of the course. If a school has been given notice of a deficiency under this section, the commission shall give the school an opportunity to correct the deficiency within thirty (30) days.

Section 7. An effort made directly or indirectly by a school, official or employee, or a person on their behalf to reconstruct the real estate licensing examination or portion of the examination shall result in immediate revocation of school approval.

Section 8. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Application for an Approved Real Estate School", 10/97 edition, Kentucky Real Estate Commission;
  - (b) "Course Outline", 10/97 edition, Kentucky Real Estate Commission;
  - (c) "Certificate of Completion", 10/97 edition, Kentucky Real Estate Commission; and
  - (d) "Topics Prescribed by the Real Estate Commission", 2000 edition, Kentucky Real Estate Commission.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

## **201 KAR 11:175. Instructor approval procedures and guidelines**

RELATES TO: KRS 324.010(1)(g), 324.046(1), (2)

Section 1. To apply for certification as an instructor at an approved real estate school, an instructor shall:

- (1) Submit a:
  - (a) Completed Real Estate Instructor Application;
  - (b) Copy of a current resume;
  - (c) Copy of legal documentation required to support an answer, if applicable; and
  - (d) Completed course outline for each course;
- (2) Have:
  - (a) A bachelor's, masters or doctorate degree from a college or university duly accredited by a nationally recognized rating or accrediting organization, in a field directly related to the nature of the course, such as real estate, business, law, finance, or education;
  - (b) An associate degree in real estate from a college or university duly accredited by a nationally recognized rating or accrediting organization;
  - (c) Completed five (5) consecutive years full-time experience in the real estate related subject area that he is teaching (averaging at least twenty (20) hours per week for each of the five (5) years); or
  - (d) A combination of teaching, education, and full-time experience in real estate totaling five (5) years (averaging at least twenty (20) hours per week for each year of experience); and
- (3) Possess:
  - (a) A thorough familiarity of the provisions of KRS Chapter 324 and the effect of those provisions on the subject area of the course; and
  - (b) A thorough knowledge of the subject area of the course he is teaching.

Section 2. Approval of an instructor shall be withdrawn by the commission for:

- (1) A violation of a provision of KRS Chapter 324 or an administrative regulation promulgated under it;
- (2) Falsification of material submitted to the commission to become an approved instructor;
- (3) Failure to provide to the commission requested material;
- (4) While acting as an instructor in an educational facility, engaging in brokerage activity with an enrolled student;
- (5) Soliciting an investment from a student; or
- (6) Attempting to recruit a student to a real estate company while acting as an instructor.

Section 3.

- (1) An approved instructor shall teach:
  - (a) A prelicensure course offered by an:
    - 1. Approved real estate school; or
    - 2. Accredited real estate school which receives funding under the real estate education, research and recovery fund; or
  - (b) A mandatory continuing education course.
- (2) A person who is not an approved instructor shall not teach a course listed in subsection (1) of this section.

Section 4. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Real Estate Instructor Application", 11/97 edition, Kentucky Real Estate Commission; and
  - (b) "Course Outline", 11/97 edition, Kentucky Real Estate Commission.
- (2) This material may be inspected, copied, or obtained at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

**201 KAR 11:180. Promotion of out-of-state property and time-shares, registration and prerequisites**

RELATES TO: KRS 324.020(6), 324.142

**Section 1. Definitions.**

- (1) "Promotional activities" means every solicitation or attempt to bring about the sale, exchange, lease, assignment, license or award with regard to an interest in real estate.
  - (a) A time-share estate, wherein a freehold estate or an estate for years is conveyed;
  - (b) A vacation lease, wherein a buyer purchases the right to occupy a specific accommodation for a specified time period over a specified number of years;
  - (c) A vacation license or club membership, wherein a buyer acquires the right to occupy an undesignated unit at certain real property(ies) during a specific time each year for a specific number of years;
  - (d) Variations of the above that result in the acquisition of the right to use real property for a limited period of time in recurring intervals for a number of years.
- (2) "Time-share" means an arrangement under which one may acquire, for a period of time, the right to use and occupy property, for a recurring block of time. A time-share may be:
  - (a) A time-share estate, wherein a freehold estate or an estate for years is conveyed;
  - (b) A vacation lease, wherein the buyer purchases the right to occupy a specific accommodation for a specified time period over a specified number of years;
  - (c) A vacation license or club membership, wherein a buyer acquires the right to occupy an undesignated unit at a certain real property(ies) during a specific time each year for a specific number of years; or
  - (d) Variations of the above that result in the acquisition of the right to use real property for a limited period of time in recurring intervals for a number of years.

**Section 2.**

To obtain commission approval for engaging in promotional activities in the Commonwealth for property located outside of the Commonwealth, each applicant shall file with the commission the applicable documents set forth below:

- (1) "Registration of out-of-state properties and time share" form [provided by the commission] setting forth pertinent data pertaining to: legal description of property, name(s) of developers, owners and persons involved in promotional activities, type of offering, form of ownership of property, encumbrance(s) on property, current and anticipated improvements, taxes and assessments, facilities and services offered or to be offered in the future, and description of promotional activities to be conducted in Kentucky.
- (2)
  - (a) If a corporation, submits a copy of the Articles of Incorporation with all amendments thereto and a current list of the names and addresses of officers and directors with their principal occupation at the current time,
  - (b) Out-of-state corporations must also submit "certificate of authority" issued by the office of the Secretary of State of the Commonwealth of Kentucky.
- (3) If a partnership or association, submits a copy of Articles of Partnership or other organizational documents.
- (4) "Consent to Service of Process" form.
- (5) Copies of all sales contracts, agreements, option forms, lease forms, and the prospectus currently used for the property.
- (6) "Consent to Inspect" form, for commission to inspect the real estate being promoted and to inspect and copy books and reports of the owner and/or developer at the cost of the applicant.

**Section 3. Exemptions.** The registration required under Section 2 of this administrative regulation shall not apply to:

- (1) The making of any offer or disposition of any out-of-state property:
  - (a) By an owner in a single or isolated transaction;
  - (b) By any government or government agency; or
  - (c) By court order.

- (2) Any applicant that has been granted an exemption by the Kentucky Real Estate Commission on the grounds that their promotional activities involve property of a small amount or of such a limited character that the public interest and protection of purchasers is deemed unnecessary with regard to said offerings.
- (3) Any applicant who has registered under the Federal Interstate Land Sales Full Disclosure Act shall be exempt from the registration requirements contained in Section 2 of this administrative regulation, upon the filing with the commission of a copy of an effective statement of record filed with the Secretary of Housing and Urban Development.

**Section 4.** Sellers of time-share plans in Kentucky regardless of location of property shall verify, on the "Affidavit of Timeshare Developer" form:

- (1) That each purchaser shall receive a fully completed copy of any contracts pertaining to the sale which includes the date of execution of contract, financial obligations of purchaser (including initial purchase price and any additional charges to which purchaser may be subject), estimated date of availability of accommodation or facility which is not completed at time of contract, and a description of the nature and duration of the time-share being sold.
- (2) That each purchaser shall be informed orally at the time he or she signs a contract of the purchaser's right to rescission, which shall be substantially similar to that set forth in subsection (3) of this section.
- (3) That all sales contracts utilized in the promotion and sale of said time-share plans shall include in underlined, bold face type of a minimum size of ten (10) points substantially the following statement:

"You may cancel this contract without any penalty or obligation within three (3) business days from the above date. If you cancel, any payments made by you under the contract and any negotiable instrument executed by you will be returned within ten (10) business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you decide to cancel this contract, you must notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to:

Name of seller at:

Address of seller:

**NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THIS CONTRACT."**

- (4) That if no interest in real property is being conveyed, contracts shall also contain the following statements in underlined, bold face type of a minimum size of ten (10) points: "You may also cancel this contract at any time after the accommodations or facilities are no longer available as provided in this contract."

**Section 5.**

- (1) Violation of any of the requirements of this administrative regulation or failure to comply with the provision of the notice of cancellation by a licensee shall constitute a violation of KRS 324.160(4)(u) of this administrative regulation.
- (2) Pursuant to KRS 324.142, commission approval is required for a licensee to promote out-of-state property and time-shares, even if exempted from other registration requirements under Section 3 of this administrative regulation. Violation of any of the requirements of this administrative regulation or failure to comply with the provision of the notice of cancellation by an owner/developer shall result in either revocation or denial of approval, whichever is applicable, and may be enforced by injunctive action under KRS 324.020(6).

**Section 6. Incorporation by Reference.**

- (1) The following material is incorporated by reference:
  - (a) "Registration of Out-of-State Properties and Time Shares"

- (1985);
- (b) "Consent to Service of Process" (1985);
- (c) "Consent to Inspect" (1985); and
- (d) "Affidavit of Timeshare Developer" (1985).
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday – Friday, 8 a.m. to 4:30 p.m.

**201 KAR 11:190. Rules of practice and procedure before the Kentucky Real Estate Commission**

RELATES TO: KRS 324.150, 324.151, 324.160, 324.170, 324.200, 324.281(5)

**Section 1. Complaint Review and Investigation.**

- (1) An aggrieved party shall file a Sworn Statement of Complaint against a licensed real estate sales associate or broker. The complaint shall:
  - (a) Allege a prima facie case of specific violation of KRS 324.160 in accordance with KRS 324.151;
  - (b) State the basis of the complaint fully and concisely, including the name of the broker or principal broker;
  - (c) Be notarized by a notary public;
  - (d) Include a completed damages claimed form, with a copy of each receipt, estimate, or other evidence of damages attached to the report; and
  - (e) Be filed within two (2) years from:
    - 1. Actual knowledge of the cause of action; or
    - 2. The time circumstances would reasonably have put the aggrieved party on notice of the cause of action.
- (2) If the commission staff review determines the Sworn Statement of Complaint does not allege a prima facie case of a specific violation of KRS 324.160, the aggrieved party shall file a Sworn Supplement to Complaint in accordance with KRS 324.151.
- (3) A respondent shall file a Sworn Answer to Complaint if a complaint is filed against him in accordance with the requirements of KRS 324.151(3). The answer shall:
  - (a) Identify the respondent;
  - (b) State his responses to the complaint;
  - (c) Be notarized by a notary public; and
  - (d) Include a copy of the following documents:
    - 1. Listing contract;
    - 2. Purchase contract;
    - 3. Seller's disclosure form;
    - 4. Agency disclosure form; and
    - 5. Settlement statement.
- (4) Upon completion of an investigation following the submission of a complaint and answer, the commission shall:
  - (a)
    - 1. Dismiss the case without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of KRS Chapter 324; or
    - 2. Schedule an administrative hearing pursuant to KRS Chapter 13B, 324.151, and 324.170; and
  - (b) Notify the complainant and respondent of its decision in writing. The notification shall include a brief statement explaining the commission's reasons for the decision.

**Section 2. Motions.**

- (1) A request for the commission or a hearing officer to take or refrain from taking an action shall be made by an oral or written motion.
- (2) A motion shall state the basis for the motion, including a citation to or description of the legal authority in support of the requested action, if applicable.
- (3) A party shall be given an opportunity to respond to a motion.

**Section 3. Withdrawal of a Complaint. A complainant may withdraw a complaint if:**

- (1) (a) An answer has not been filed in accordance with KRS 324.151; and
- (b) The withdrawal is made within twenty (20) days of the date the complaint was filed; or
- (2) (a) There is good cause for the withdrawal; and

- (b) The commission approves the withdrawal.
- Section 4. Consolidation and Severance.**

- (1) A hearing officer may consolidate cases assigned to his docket upon a finding by the hearing officer that:
  - (a) There are:
    - 1. Common questions of law or fact; or
    - 2. Identical issues or witnesses; and
  - (b) Consolidation is appropriate.
- (2) A hearing officer may sever consolidated cases or claims in an administrative action upon a finding that the requirements for consolidation established in subsection (1) of this section are not met.

**Section 5. Incorporation by Reference.**

- (1) The following material is incorporated by reference:
  - (a) "Sworn Statement of Complaint" 3/01 edition, Kentucky Real Estate Commission;
  - (b) "Sworn Answer to Complaint", 7/98 edition, Kentucky Real Estate Commission; and
  - (c) "Sworn Supplement to Complaint", 10/00 edition, Kentucky Real Estate Commission.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

**201 KAR 11:210. Licensing, education, and testing requirements**

RELATES TO: KRS 324.010, 324.040, 324.045(1), (2), (3), 324.046

**Section 1.** In lieu of proof of high school graduation or a GED diploma, an applicant may submit an official transcript from a United States institution, or from an institution outside of the United States as indicated in Section 2 of this administrative regulation, which indicates completion of a degree program at a post secondary institution, or a transcript from a United States institution, or from an institution outside of the United States as indicated in Section 2 of this administrative regulation, which indicates successful completion of twenty-eight (28) academic semester hours or equivalent from a post secondary institution.

**Section 2.** If an applicant submits information from a non-United States institution, the diploma or transcript shall be translated by the applicant or the applicant's representative if the Real Estate Commission requests translation. The applicant shall also submit a notarized letter from the reviewing institution's representative indicating the school curriculum is equivalent to a GED or high school diploma. If the applicant cannot meet the requirements of this section, he or she shall be required to submit proof of a GED granted by a United States agency or institution.

**Section 3.** An official transcript is a document imprinted with the institution's seal, signed by the registrar, and sent directly from the institution to the commission.

**Section 4.** A real estate course shall be one which is designated specifically as a real estate course by an approved or accredited real estate school which offers the course. The academic content for the course shall specifically focus on real estate. The course shall be for academic credit and not a continuing education unit, examination preparation or review, experiential education, or competency testing. Candidates shall not submit completion of the same course or essentially same course twice for licensure credit.

**Section 5.** Each course for which credit is granted under this section shall be approved or rejected under the following procedure:

- (1) A course description from the school catalog, course syllabus, table of contents from text used in the course, or other summary of the course shall be provided to the Real Estate Commission by the applicant prior to approval;
- (2) The commission education director shall review the material submitted by the applicant and recommend the commission either grant or reject credit under this section at the Real Estate Commission's regular monthly meeting;
- (3) The commission education director shall record:
  - (a) The name of the course;
  - (b) Whether approval was granted or rejected; and
  - (c) The date of approval or rejection.

- (4) If a course has been previously approved by the Real Estate Commission under this section or if a course is substantially similar to a previously-approved course, the commission education director shall be authorized to determine course approval;
- (5) In determining whether a course is substantially similar to a previously-approved course, one (1) or more of the following items shall be considered:
  - (a) The table of contents from text used in the course;
  - (b) The course syllabus;
  - (c) Course description from the school catalog; or
  - (d) Summary of the course other than the table of contents or syllabus.
- (6) The commission education director shall notify an applicant if a course is rejected for credit under this section;
- (7) If an applicant disagrees with the education director's decision under this section, he or she shall have ten (10) days from the notification of rejection to specifically indicate in writing to the Real Estate Commission Education Director disagreement and request review by the entire Real Estate Commission. Failure to indicate disagreement within ten (10) days shall constitute waiver by the applicant and the education director's decision shall become final;
- (8) In addition to the indication to the education director of disagreement with his or her decision, the applicant shall provide a written summary to the education director detailing why credit under this section is merited. The commission education director shall forward this summary to the commission along with his or her response to the Real Estate Commission for a final decision at the Real Estate Commission's regular monthly meeting. Failure to provide within ten (10) days a specific summary detailing why credit is merited under this section shall constitute waiver by the applicant and the education director's decision shall become final at that point;
- (9) If the applicant indicates disagreement with the education director's decision within ten (10) days of notification and provides a written summary detailing the disagreement within ten (10) days of notification, the Real Estate Commission shall consider the submissions from the applicant and the education director and reject or approve the course for credit under this section. The Real Estate Commission shall notify the applicant of its decision in writing.

Section 6. An applicant who successfully passes the real estate examination shall apply for a license within sixty (60) days after the examination. A candidate who fails to apply for a license within this period shall be reexamined.

## **201 KAR 11:220. Errors and omissions insurance requirements**

RELATES TO: KRS 324.395

Section 1. Insurance companies providing real estate errors and omissions insurance for real estate licensees must provide a signed certification to the insured licensee containing the language prescribed by the commission which will confirm that the obligations of the insurance company meets the minimum requirements set forth in this administrative regulation. Licensees who choose to be insured by other than the group insurance policy obtained by the commission, shall file the certification with their license renewal application in accordance with KRS 324.395(6).

Section 2. The insurance for which the certification has been executed may not be terminated, cancelled, lapsed or nonrenewed without the insurance company having provided the commission with prior written notice.

Section 3. The minimum requirements for the coverage contained in the insurance policy for which the certification has been executed shall provide that:

- (1) Coverage shall be that known as real estate agents errors and omissions insurance or real estate agents professional liability insurance.

- (2) The limit of liability shall be no less than \$100,000 for any one (1) claim nor less than \$1,000,000 annual aggregate limit of liability, including the cost of investigation and defense.
- (3) The maximum deductibles, which may be separate deductibles, may not exceed \$2,500 for judgment or settlement and \$1,000 for the cost of investigation and defense.
- (4) Coverage shall apply for any covered claim resulting from a licensed activity that occurred subsequent to April 1, 1987 unless such claim had been made against the licensee before the present insurance policy's inception or is insured by a previous insurance policy.

Section 4. Except as provided in Section 5 of this administrative regulation, coverage may not exclude claims brought against the insureds arising out of an act or failure to act by the insured licensee when performing a professional service for which a license is required by the Commonwealth of Kentucky under KRS 324.010.

Section 5. Coverage may exclude claims brought against the insureds, regardless of whether the professional service involves an activity for which a license is required by the Commonwealth of Kentucky:

- (1) Arising out of a dishonest, fraudulent, criminal or malicious act, error, or omission, if committed by, at the direction of, or with the knowledge of the insured;
- (2) Arising as a result of the insolvency of the insured;
- (3) Brought about or contributed to by any inability or failure to pay or collect premium, escrow or tax money;
- (4) Brought about by any employee or former employee arising out of the contract of employment with the insured and alleging breach thereof;
- (5) Arising out of any injury or damage which the insured either expected or intended;
- (6) For bodily injury, sickness, disease or death of any person or physical injury to or destruction of or loss of use of tangible property;
- (7) Arising out of libel, slander, defamation of character, false arrest or imprisonment, wrongful entry or eviction or other invasion of the right of private occupancy, or publications or utterances in violation of an individual's right of privacy, or malicious prosecution;
- (8) Arising out of services performed by the insured which are subject to the Employee Retirement Income Security Act of 1974 as amended;
- (9) Arising out of any violation of the Securities Act of 1933 as amended or the Securities Exchange Act of 1934 as amended or any state blue sky or securities law or similar state or federal statutes;
- (10) Arising out of the conversion, misappropriation, commingling, or defalcation of funds or other property;
- (11) Brought against a real estate property manager for failure to effect or maintain adequate levels or types of insurance;
- (12) Arising out of unlawful discrimination;
- (13) Arising out of liability assumed by the insured under any indemnity, hold harmless or similar provisions or agreements, but this exclusion does not apply to liability the insured would have in the absence of such agreements;
- (14) Arising out of the insured's business and brought by or on behalf of an investor, shareholder or partner in any corporation, limited or general partnership, real estate trust or venture in which the insured has, or had, a participating interest, directly or indirectly, in the profits or losses thereof, or in connection with the insured's activities as an underwriter, sponsor, partner, joint or coventurer or member in any real estate partnership, venture or syndicate;
- (15) Arising out of, relating to or based upon the dispersal, discharge, escape, release or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases or other material, irritant, contaminant or pollutant in or into the atmosphere, or on, onto, upon, in or into surface or subsurface, including soil, water or watercourses, objects and any tangible or intangible matter, whether sudden or not, by whomever or whatsoever made, including, but not limited to, any public, private or governmental person, concern, body, entity, agency, office or corporation; or

- (16) That are excluded by the Nuclear Energy Liability Exclusion Endorsement (broad form) filed by the Insurance Services Office, Inc. with the Kentucky Department of Insurance and identified as form #IL 00 21 11 85.
- (17) Arising from the sale or property management of property developed, constructed or owned by the insured, or by any firm or corporation in which the insured has a financial interest, or by any firm coming under the same financial control as the insured, except that this exclusion does not apply and coverage is extended to claims arising from the sale of real property, provided all three (3) of the following conditions are met:
  - (a) The property was acquired by the insured under a guaranteed sale listing contract; and
  - (b) The title to the property was only temporarily held by the insured during the transit period (not to exceed one (1) year) from acquisition to resale; and
  - (c) The property is listed for sale during the entire transit period; or
- (18) Arising out of the interests, operations or activities of the insured as a mortgage banker or correspondent, escrow agent, construction manager or property developer (an insured will not be considered engaging in the activities of an escrow agent merely because the insured holds earnest money deposits, rental deposits, or similar items).

Section 6. The insurance company and the licensee may agree that the insurance policy issued to the licensee may contain deductibles higher than those established in this administrative regulation as the maximum deductibles and/or it may contain terms, conditions, limitations and exclusions other than those established by this administrative regulation as the minimum required coverages, provided the insurance company, by having executed the certification, shall remain liable to pay on behalf of the insured licensee all amounts in excess of the prescribed maximum deductibles or all amounts from any other claims excluded or limited by provisions more restrictive than the required minimum coverages if the defendant licensee fails to promptly do so. In the event, however, that the insurance company is required by having executed the certification to make payments to claimants or in defense of a claim that would not have been required by the terms and conditions of the policy except for this provision, the insurance company shall not be precluded from using any legal remedy for securing reimbursement of such amounts from the insured licensee.

### **201 KAR 11:230. Mandatory continuing education**

RELATES TO: KRS 324.010(7), (8), 324.046(5), 324.085(1), (2), 324.090, 324.281(7)

#### **Section 1.**

- (1) (a) Except as provided in paragraph (b) of this subsection, an active licensee shall meet the requirements of KRS 324.085(1) by attending a continuing education course sponsored or approved by the commission that meets the requirements established in this section of this administrative regulation.
- (b) An active licensee shall attend a commission-approved core course once every four (4) years. The core course shall:
  - 1. Satisfy the licensee's mandatory continuing education requirement for the year in which the course is taken;
  - 2. Be a six (6) hour comprehensive review of the requirements of KRS Chapter 324, 201 KAR Chapter 11, common and federal law relating to real estate, and the standards of practice for a real estate licensee; and
  - 3. Be taken according to the following schedule:
    - a. If the licensee's birth month is January, February, or March, the licensee shall take the core course in the first year of a four (4) year cycle.
    - b. If the licensee's birth month is April, May, or June, the licensee shall take the core course in the second year of a four (4) year cycle.

- c. If the licensee's birth month is July, August, or September, the licensee shall take the core course in the third year of a four (4) year cycle.
  - d. If the licensee's birth month is October, November, or December, the licensee shall take the core course in the fourth year of a four (4) year cycle.
- (2) To apply for approval of a continuing education course, a sponsor shall submit a:
  - (a) Completed Continuing Education Course Application, which shall:
    - 1. Include information concerning curriculum, instructors, and educational materials and policies; and
    - 2. Be signed by the sponsor's administrator to indicate compliance with applicable law and the requirements of this administrative regulation;
  - (b) Copy of the Certificate of Approval from the State Board for Proprietary Education, if the sponsor is:
    - 1. Not an accredited college or university; and
    - 2. Is certified by the State Board for Proprietary Education;
  - (c) Completed Real Estate Instructor Application for each instructor, as required by 201 KAR 11:175; and
  - (d) Copy of all advertising or brochures advertising the continuing education course.
- (3) To receive approval, an education course shall consist of topics that shall:
  - (a) Enable a student to better understand the brokerage business; and
  - (b) serve the public.
- (4) A course that is self-motivational in nature shall not be approved.
- (5) A course instructor shall:
  - (a) Be reasonably competent by educational background or work experience;
  - (b) Have adequate knowledge of the course material; and
  - (c) Be an "approved instructor" under the preclicensure education requirements established in 201 KAR 11:175.
- (6) An education course shall be sponsored by:
  - (a) An accredited real estate school;
  - (b) A school that has been given a certificate of approval by the Kentucky Board of Proprietary Education;
  - (c) An appropriate governmental regulatory body; or
  - (d) An approved real estate school.
- (7) A sponsor shall:
  - (a) At least thirty (30) days prior to the scheduling of a continuing education course, submit to the commission a completed Continuing Education Schedule that identifies the course provider, course title and number, instructor, date, time, and location;
  - (b) Give to each attendee listed on the roster a completed Continuing Education Completion Certificate;
  - (c) Within ten (10) days of a continuing education course, submit to the commission:
    - 1. A completed Continuing Education Attendance Roster, which shall include the name, address, and Social Security number of each attendee, in alphabetical order;
    - 2. Each completed Continuing Education Course Evaluation completed by each attendee listed on the roster; and
    - 3. A completed CE Course Evaluation Transmittal Form;
  - (d) Permit monitoring and inspection by the commission; and
  - (e) Make the course available to all licensed agents, subject to space limitations.
- (8) The commission education director shall submit the information required in subsection (7)(a) of this section to the Real Estate Commission for approval or rejection of the course.
- (9) An education course shall consist of a minimum of three (3) hours. One (1) hour of continuing education shall be allowed for each fifty (50) minutes of actual attendance.
- (10) An escrowed licensee shall not be required to attend a continuing education course. Before a license is changed from escrow to active, a licensee shall provide the commission with documentation of the



completion of the current calendar year's continuing education requirements. If the licensee has not completed a commission-approved core course in the previous four (4) years as required by subsection (1)(b) of this section, the core course shall become the current calendar year's continuing education requirement for a license changing from escrow to active.

- (11) A licensee shall not be required to attend a continuing education course during the first calendar year in which he is first licensed in Kentucky.
- (12) An active license shall not be renewed unless the licensee has complied with the provisions of this administrative regulation.
- (13) (a) A licensee shall complete the mandatory continuing education requirements of this administrative regulation by December 31 of each calendar year.
- (b) Proof of completion of the mandatory continuing education requirements shall be submitted to the commission on or before January 15 of the following calendar year.
- (c) If a licensee fails to comply with the provisions of paragraphs (a) and (b) of this subsection, the executive director shall notify him as soon as practicable on or after January 15 of the calendar year immediately following the year in which continuing education requirements were not fulfilled.
- (d) A license shall not be cancelled if a licensee:
  1. Places his license in escrow; or
  2. Completes the requirements of a delinquency plan that complies with subsection (14) of this section.
- (e) A licensee who fails to either place his license in escrow or file the delinquency plan on or before February 15 immediately following the year in which continuing education requirements were not fulfilled as required by subsection (14) of this section shall have his license cancelled as of that date.
- (14) On or before February 15 of the calendar year immediately following the year in which continuing education requirements were not fulfilled, a licensee shall submit a written delinquency plan to complete the continuing education requirements for the previous calendar year.
  - (a) The delinquency plan shall provide that the continuing education requirements for the previous calendar year shall be completed on or before June 15 immediately following the year in which continuing education requirements were not fulfilled.
  - (b) A \$200.00 fine shall be assessed against each licensee who fails to complete the continuing education requirements of KRS 324.085(1) by the end of the calendar year in which the hours were required.
  - (c) If a licensee fails to complete the requirements of the delinquency plan on or before June 15, the licensee will be notified of the deficiency in writing by the commission by July 15.
  - (d) The Real Estate Commission shall notify all licensees who failed to meet the requirements of the delinquency plan of the date on which the Real Estate Commission will conduct a hearing to consider suspending the licensee's license for failure to meet continuing education requirements and failure to meet the delinquency plan requirements. If the Real Estate Commission suspends the license after hearing, the licensee shall not be allowed to activate his license unless, within (90) ninety days of the expiration of the suspension, he;
    1. Completes the current year's continuing education requirements;
    2. Submits required documentation to reinstate the license; and
    3. Pays all necessary renewal and transfer fees as required by KRS 324.287.
  - (e) The Real Estate Commission shall offer licensees who have failed to meet continuing education requirements and have failed to meet the delinquency plan conditions the

opportunity to enter a final agreement whereby the licensee pays a fine of \$500.00 and agrees to take the delinquent educational hours on or before August 31 rather than be suspended;

- (f) If the delinquent licensee fails to enter the agreement to pay \$500.00 and complete the delinquent hours before August 31, a hearing shall be held and the licensee's license shall be suspended for six (6) months if the Real Estate Commission determines the licensee has failed to meet the requirements of this section;
- (g) If a licensee enters an agreement to pay \$500.00 and to complete the delinquent hours before August 31 and fails to either pay the fine or complete the hours, the Real Estate Commission shall notify the licensee of the date on which the Real Estate Commission will conduct a hearing to determine whether the licensee has paid the \$500.00 and completed the delinquent hours before August 31. The Real Estate Commission shall suspend the licensee's license if the Real Estate Commission determines the licensee has failed to meet the requirements of this section; and
  1. To reinstate a suspended license at the conclusion of the six (6) month period, the licensee shall, within ninety (90) days of the expiration of the suspension:
    - a. Complete the current year's continuing education requirements;
    - b. Submit required documentation to reinstate the license;
    - c. Pay all necessary renewal and transfer fees as required by KRS 324.287;
    - d. Attend a Kentucky Real Estate Commission Core Course and six (6) hours of continuing education related to the study of real estate law.
  2. If the licensee does not comply with the requirements of subparagraph 2 of this paragraph, after ninety (90) days:
    - a. The license shall be cancelled; and
    - b. The licensee shall meet the requirements for initial licensure, including retaking the examination.
- (15) A licensee who places his license in escrow under the provisions of subsection (13)(d) of this section shall not reactivate his license unless he has:
  - (a) Completed the current year's mandatory continuing education requirements;
  - (b) Paid the fees required by KRS 324.287 and under this administrative regulation; and
  - (c) Attended the core course as required by subsection (1)(b) of this section.
- (16) The time requirements established in this administrative regulation may be extended by the commission if:
  - (a) A true hardship or other good cause clearly warrants relief; and
  - (b) The request for extension is received in writing on or before February 15 of the calendar year immediately following the year in which continuing education requirements were not fulfilled or July 1 if the licensee has entered a delinquency plan.
- (17) Licensees who attend continuing education in another state may receive approval for continuing education courses completed in another state provided:
  - (a) The regulatory jurisdiction where the continuing education course is held accepts courses held in Kentucky for continuing education credit in the jurisdiction;
  - (b) The real estate regulatory agency of the state where the course is held approved the course for continuing education;
  - (c) The course is conducted during the calendar year for which continuing education credit is sought;
  - (d) The course enables the licensee to better understand the real estate brokerage business;
  - (e) The licensee submits proof of completion of the out-of-state course to the Kentucky Real Estate Commission through a Course Completion Certificate or other documentation

certificate, which indicates course completion. The documentation certificate shall provide the:

1. Name and residence address of the licensee seeking continuing education credit;
  2. Name of the course for which credit is sought;
  3. Course number if one exists;
  4. Number of hours completed and for which credit is sought;
  5. Continuing education provider's name;
  6. A signature from a representative of the continuing education provider documenting the licensee's course attendance for which continuing education credit is sought;
  7. Regulatory jurisdiction where the course is approved for continuing education credit; and
  8. An outline of the specific course for which continuing education credit is sought if the outline is specifically requested by the Kentucky Real Estate Commission.
- (f) The completion documentation certificate shall be provided to the Kentucky Real Estate Commission within fourteen (14) days of the licensee's receipt of the certificate from the regulatory body where the course is approved for continuing education credit.
- (g) The licensee seeking continuing education credit for courses not specifically approved by the Kentucky Real Estate Commission shall submit a completed "Kentucky Real Estate Commission Out-of-state Continuing Education Form".
- (h) The Kentucky Real Estate Commission may review:
1. The course completion form or other completion documentation; and
  2. The course outline.
    - (i) If after review of the course completion form, other completion documentation, or course outline, the Real Estate Commission determines the course does not merit continuing education credit, the Real Estate Commission may deny continuing education credit for the course. The Real Estate Commission shall notify the licensee of this denial and a brief explanation of the reasons for denial.
- (18) (a) A licensee who teaches an approved continuing education course shall be entitled to:
1. One (1) hour of credit for each hour of instruction he teaches; and
  2. Two (2) hours credit for preparation for each course he teaches.
- (b) The instructor's supervisor shall submit a written request for credit to be awarded for teaching a class. The request shall contain the instructor's name, date and name of course, and the number of hours.
- (c) The instructor shall not receive credit more than once in a calendar year for teaching a specific course.
- (19) Hours of instruction in prelicense real estate education courses shall be credited to the mandatory continuing education requirements.
- (a) The licensee shall submit a transcript or course completion certificate for the prelicense course in order to receive credit toward the continuing education requirements for that calendar year.
- (b) An instructor of an approved prelicense real estate course shall receive credit toward his continuing education requirements. Instructor credit for a prelicense course shall comply with the requirements for a continuing education course, as established in subsection (18) of this section.
- (20) Hours of mandatory continuing education exceeding the amount required shall not be carried forward to the next year's requirements.
- (21) The provisions of this administrative regulation shall not apply to any person licensed by the commission prior to June 19, 1976.

## Section 2. Incorporation by Reference.

- (1) The following material is incorporated by reference:

- (a) "Continuing Education Course Application", 11/97 edition, Kentucky Real Estate Commission;
- (b) "Continuing Education Schedule", 11/97 edition, Kentucky Real Estate Commission;
- (c) "Continuing Education Attendance Roster", 11/97 edition, Kentucky Real Estate Commission;
- (d) "CE Course Evaluation Transmittal Form", 11/97 edition, Kentucky Real Estate Commission;
- (e) "Continuing Education Course Evaluation", 11/97 edition, Kentucky Real Estate Commission;
- (f) "Continuing Education Completion Certificate", 11/97 edition, Kentucky Real Estate Commission; and
- (g) "Kentucky Real Estate Commission Out-of-state Continuing Education Compliance Form", 10/00 edition, Kentucky Real Estate Commission.

- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

## **201 KAR 11:245. Property management procedures and guidelines**

RELATES TO: KRS 324.160(4)(f), (h)

### Section 1.

- (1) A licensee shall not engage in property management without a current written property management agreement.
- (2) A property management agreement shall contain:
- (a) The business name and address of the licensed agent's company;
  - (b) The name and address of the owner;
  - (c) The address of the real estate being managed and the number of units;
  - (d) The date when the agreement begins and ends, and a provision stating whether the owner agrees or not to automatic annual renewal;
  - (e) A provision stating the method for early termination;
  - (f) The amount of, or the method for computing the amount of compensation to the licensee;
  - (g) The amount of or the method of determining the minimum security deposit to be collected from tenants for each unit managed;
  - (h) The name and address of the bank where the licensee's escrow account is kept where the security deposit will be held together with the account number. This information shall also be contained in the lease;
  - (i) A provision which is in accord with KRS 383.580 setting forth the procedures governing returning or retaining the security deposit. This provision shall also be contained in the lease;
  - (j) A provision setting forth the conditions under which the licensee is authorized to pay expenses related to the real estate being managed;
  - (k) A statement setting forth the date when the licensee shall send the owner an accounting of the transactions related to the real estate being managed;
  - (l) A copy of the form of the lease document which the licensee shall have the tenant sign shall be attached to the agreement;
  - (m) A provision whereby the owner certifies that he has received a duplicate copy of the agreement and the attached lease form; and
  - (n) The signature and date of signature of the owner and the licensee.

### Section 2.

- (1) An owner ledger, in electronic or written form, shall be maintained for each owner of real estate being managed.
- (2) A tenant ledger, in electronic or written form, shall be maintained for each tenant renting real estate being managed.
- (3) (a) A receipt shall be given for money received.

- (b) Money received shall be deposited into an escrow or management account of the licensee without unreasonable delay. Licensees who have an ownership in the real estate being managed shall comply with the requirements of KRS 383.580.
- (c) The amount of money received shall be entered into the owner and tenant ledgers, by unit.
- (4) Expenses paid by an agent shall be documented by invoice or receipt, by unit. Documentation shall be retained with a licensee's records.
- (5) Adjustments to a security deposit shall be made in accordance with KRS 383.580. Adjustments shall also be entered on the owner and tenant ledgers, by unit.
- (6) A licensee shall send a monthly accounting to an owner of transactions:
  - (a) Related to the real estate being managed, by unit; and
  - (b) Entered on the owner and tenant ledgers, by unit.
- (7) Within sixty (60) days of the termination of a management agreement, a licensee shall send the owner a final accounting. The final accounting shall contain transactions that occurred after the last monthly accounting.
- (8) A licensee who owns the real estate being managed shall:
  - (a) Comply with the accounting requirements relating to receipt, deposit and adjustment of tenant security deposits; and
  - (b) Be exempt from the other accounting requirement specified in this administrative regulation.

Section 3. A broker shall retain property management agreements, leases, monthly statements, owner and tenant ledgers, and bank statements relating to property management for five (5) years.

Section 4. A tenant security deposit shall be deposited and maintained in an escrow account in compliance with KRS 324.111. A licensee who has an ownership in the real estate being managed shall comply with the requirements of KRS 383.580.

#### **201 KAR 11:250. Listing and purchase contracts - provisions required**

RELATES TO: KRS 324.160(4)(w), 324.281(5)

Section 1. Listing contracts shall include the:

- (1) Listing price of the property, unless the sale is to be by auction;
- (2) Date and time of the signing of the listing contract for all parties who sign;
- (3) Date and time of expiration of the listing contract;
- (4) Fee or compensation agreed upon;
- (5) Street, address or location of the real estate listed for sale;
- (6) Signatures of all owners;
- (7) Special directions of the owner concerning limitations on showings and sub agency restrictions; and
- (8) Date and time for initialing of all changes on the contract.

#### **201 KAR 11:350. SELLER'S DISCLOSURE OF PROPERTY CONDITION**

RELATES TO: KRS 324.360

The information in this form is only for the period the undersigned owned the property, beginning

\_\_\_\_\_ to \_\_\_\_\_  
(date of purchase) (date of this form)

PROPERTY ADDRESS: \_\_\_\_\_

This form applies to sales and purchases of residential real estate. This form is not required for:

- 1. Residential purchases of new homes if a warranty is offered;
- 2. Sales of real estate at auction; or
- 3. A court supervised foreclosure.

PURPOSE OF STATEMENT: Completion of this form shall satisfy the requirements of KRS 324.360 which mandates the seller's disclosure of information about the property he is about to sell. This disclosure is based solely on the seller's observation and knowledge of the property's condition and the improvements thereon. This statement shall not be a warranty by the seller or seller's agent and shall not be intended as a substitute for an inspection or warranty the purchaser may wish to obtain.

Section 2. An offer to purchase or a counteroffer prepared by or at the direction of a licensed agent shall include the:

- (1) Purchase price, the amount of contract deposit given and who is to hold the deposit;
- (2) Date and time of signing of the offer or counteroffer for all parties who sign;
- (3) Date and time when the offer or counteroffer expires;
- (4) Street, address or a general description of the real estate sufficient to identify the parcel;
- (5) Names of the offering party and the agent who prepared the offer or counteroffer; and
- (6) Provision setting forth the date by which the closing shall occur and when possession shall be given to the buyer.

Section 3.

- (1) If a licensee presents an offer to purchase real estate for which an executory contract to sell the property is already in existence, the offer shall indicate in writing that the offer is contingent upon the nonperformance of the existing executory contract by inserting the following provision in the offer: "This offer is submitted as a back-up offer, which means the property is subject to a previously-accepted offer which has priority over this offer."
- (2) The provision required in subsection (1) of this section shall be:
  - (a) Inserted by the licensee who prepares the offer to purchase, if he is aware of the existing contract; and
  - (b) Made by the listing licensee as a counteroffer.

Section 4. Contracts to contain financing provisions. All contracts providing for the purchase of property shall specifically set forth:

- (1) The manner in which the purchase shall be financed; and
- (2) The amount of any encumbrance and whether same is to be underwritten by the seller or a commercial institution or otherwise.

#### **201 KAR 11:300. Use of facsimile transmissions**

RELATES TO: KRS 324.281(5), 324.282

Section 1.

- (1) A licensee may use facsimile (FAX) devices to transmit and receive documents according to the provisions of this administrative regulation.
- (2) A copy of a document transmitted by FAX device shall be immediately mailed by regular mail, postage prepaid and properly addressed, to the person to whom the FAX transmission is transmitted.
- (3) A document received by FAX device shall be immediately reproduced on nonthermographic paper and placed in the licensee's file as required under 201 KAR 11:062.

Section 2. If a licensee complies with Section 1 of this administrative regulation, the time of delivery of a document transmitted by FAX device, and a document required to be submitted under 201 KAR 11:045, shall be the time of transmission by FAX device.

INSTRUCTIONS TO THE SELLER: (1) Complete all numbered items. (2) Report all known conditions affecting the property. (3) Attach additional pages, if necessary, with your signature and the date and time of signing. (4) Complete this form yourself or sign the authorization at the end of this form to authorize the licensee to complete this form on your behalf in accordance with KRS 324.360(9). (5) If some items do not apply to your property, write "not applicable." (6) If you do not know the answer to a question, write "unknown."

SELLER'S DISCLOSURE: As seller, I/we disclose the following information regarding the property. This information is true and accurate to the best of my/our knowledge as of the date signed. Seller authorizes the agent to provide a copy of this statement to a person or entity in connection with actual or anticipated sale of the property or as otherwise provided by law. The following are not the representations of the agent.

Please answer all questions. If the answer is yes, please explain. If additional space is needed, use the reverse side or make attachments.

		YES	NO	UNKNOWN
<b>1. HOUSE SYSTEMS</b>				
	Any past or current problems affecting:			
	(a) Plumbing .....	___	___	___
	(b) Electrical system .....	___	___	___
	(c) Appliances.....	___	___	___
	(d) Floors and walls.....	___	___	___
	(e) Doors and windows .....	___	___	___
	(f) Ceiling and attic fans .....	___	___	___
	(g) Security system .....	___	___	___
	(h) Sump pump .....	___	___	___
	(i) Chimneys, fireplaces, inserts .....	___	___	___
	(j) Pool, hot tubs, sauna .....	___	___	___
	(k) Sprinkler system.....	___	___	___
	(l) Heating.....age.....	___	___	___
	(m) Cooling/air conditioning.....age.....	___	___	___
	Explain: .....			
<b>2. FOUNDATION/STRUCTURE/BASEMENT</b>				
	(a) Any defects or problems, current or past, to the foundation or slab?	___	___	___
	(b) Any defects or problems, current or past, to the structure or exterior veneer?	___	___	___
	Explain: .....			
	(c) Has the basement leaked at anytime since you have owned or lived in the property?	___	___	___
	(d) When was the last time the basement leaked? .....			
	(e) Have you ever had any repairs done to the basement?.....	___	___	___
	(f) If you have had repairs done to the basement relative to leaking, when was the repair performed? .....	___	___	___
	Explain: .....			
	(g) If the basement presently leaks, how often does it leak? (e.g., every time it rains, only after an extremely heavy rain, etc.) .....			
	(h) Have you experienced, or are you aware of, any water or drainage problems with Regard to the crawl space?.....	___	___	___
<b>3. ROOF</b>				
	(a) Age of the roof ? .....			
	(b) 1. Has the roof leaked at any time since you have owned or lived in the property?	___	___	___
	2. When was the last time the roof leaked? .....			
	(c) 1. Have you ever had any repairs done to the roof? .....	___	___	___
	2. If you have ever had the roof repaired, when was the repair performed? .....			
	(d) 1. Have you ever had the roof replaced?.....	___	___	___
	2. If you have had the roof replaced, when was the replacement performed? .....			
	(e) If the roof presently leaks, how often does it leak? (e.g., every time it rains, only after an extremely heavy rain, etc.) .....			
	(f) 1. Have you ever had roof repairs that involved placing shingles on the roof instead of replacing the entire roof?.....	___	___	___
	2. If you have ever had roof repairs that involved placing shingles on the roof instead of replacing the entire roof, when as the repair performed? .....			
<b>4. LAND/DRAINAGE</b>				
	(a) Any soil stability problems?.....	___	___	___
	(b) Has the property ever had a drainage, flooding, or grading problem?.....	___	___	___
	(c) Is the property in a flood plain zone?.....	___	___	___
	(d) Is there a retention/detention basin, pond, lake, creek, spring, or water shed on or adjoining this property? .....	___	___	___
	Explain: .....			
<b>5. BOUNDARIES</b>				
	(a) Have you ever had a staked or pinned survey of the property?.....	___	___	___
	(b) Do you know the boundaries?.....	___	___	___
	(c) Are the boundaries marked in any way?.....	___	___	___
	(d) Are there any encroachments or unrecorded easements relating to the property of which you are aware? .....	___	___	___
	Explain: .....			
<b>6. WATER</b>				

(a) 1. Source of water supply \_\_\_\_\_  
 2. Are you aware of below normal water supply or water pressure? ..... \_\_\_\_\_

(b) Is there a water purification system or softener remaining with the house?..... \_\_\_\_\_

(c) Has your water ever been tested? If yes, give results \_\_\_\_\_  
 Explain: \_\_\_\_\_

**7. SEWER SYSTEM**

(a) Property is serviced by: \_\_\_\_\_ public sewer; \_\_\_\_\_ private sewer; \_\_\_\_\_ septic tank; \_\_\_\_\_ storm sewer; \_\_\_\_\_ leach field; \_\_\_\_\_ aeration tank; \_\_\_\_\_ filtration bed; \_\_\_\_\_ unknown

(b) If not a public or private sewer, Date of last inspection \_\_\_\_\_, Date last cleaned \_\_\_\_\_

(c) Are you aware of any problems with the sewer system? \_\_\_\_\_  
 Explain: \_\_\_\_\_

**8. CONSTRUCTION/REMODELING**

(a) Have there been any additions, structural modifications, or other alterations made? \_\_\_\_\_

(b) Were all necessary permits and government approvals obtained?..... \_\_\_\_\_  
 Explain: \_\_\_\_\_

**9. HOMEOWNER'S ASSOCIATION**

(a) 1. Is the property subject to rules or regulations of a homeowner's association?..... \_\_\_\_\_  
 2. If yes, what is the yearly assessment? \$ \_\_\_\_\_

(b) Are you aware of any condition which may result in an increase in taxes or assessments?..... \_\_\_\_\_

(c) Are any features of the property shared in common with adjoining landowners, such as walls, fences, driveways, etc.?..... \_\_\_\_\_  
 Explain: \_\_\_\_\_

**10. MISCELLANEOUS**

(a) Was this house built before 1978? ..... \_\_\_\_\_

(b) Are you aware of any use of ureaformaldehyde, asbestos materials, or lead based paint in or on this home?..... \_\_\_\_\_

(c) 1. Are you aware of any testing for radon gas?..... \_\_\_\_\_  
 2. Results, if tested \_\_\_\_\_

(d) Are you aware of any underground storage tanks, old septic tanks, field lines, cisterns, or abandoned wells on the property?..... \_\_\_\_\_

(e) Are you aware of any present or past wood infestation (i.e. termites, bores, carpenter ants, fungi, etc.)?..... \_\_\_\_\_

(f) Are you aware of any damage due to wood infestation?..... \_\_\_\_\_

(g) 1. Have the house or other improvements ever been treated for wood infestation? \_\_\_\_\_  
 2. If yes, when, by whom, and any warranties? \_\_\_\_\_

(h) Are you aware of any existing or threatened legal action affecting this property? \_\_\_\_\_

(i) Are there any assessments other than property assessments that apply to this property (i.e. sewer assessments)?..... \_\_\_\_\_

(j) Are you aware of any violations of local, state, or federal laws, codes, or ordinances relating to this property?..... \_\_\_\_\_

(k) Are you aware of any other conditions which are defective with regard to this property?..... \_\_\_\_\_

(l) Are there any environmental hazards known to seller?..... \_\_\_\_\_

(m) Are there any warranties to be passed on?..... \_\_\_\_\_

(n) Has this house ever been damaged by fire or other disaster (i.e., tornado, hail, etc.)? \_\_\_\_\_  
 If yes, please explain: \_\_\_\_\_

(o) Are you aware of the existence of mold or other fungi in the property? ..... \_\_\_\_\_

**SPACE FOR ADDITIONAL INFORMATION**

The seller has owned this property since \_\_\_\_\_ (date) and makes these representations only since that date. Seller agrees to immediately notify Buyer of any changes which may become known to Seller prior to closing.

Seller _____	Date _____	Seller _____	Date _____
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THE LICENSEE NAME HERE ( \_\_\_\_\_ ) HAS BEEN REQUESTED BY THE OWNER TO COMPLETE THIS FORM AND HAS DONE SO. I HEREBY AGREE TO HOLD HARMLESS THE NAMED LICENSEE FOR ANY REPRESENTATION THAT APPEAR ON THIS FORM.

Seller: \_\_\_\_\_ Date \_\_\_\_\_

THE SELLER REFUSES TO COMPLETE THIS FORM AND ACKNOWLEDGES THAT THE AGENT SHALL SO INFORM THE BUYER.

Seller: \_\_\_\_\_ Seller: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

THE SELLER HAS REFUSED TO COMPLETE THIS FORM AND HAS REFUSED TO ACKNOWLEDGE HIS FAILURE TO COMPLETE THE FORM

Broker/Agent: \_\_\_\_\_ Date: \_\_\_\_\_

THE BUYER ACKNOWLEDGES RECEIPT OF THIS FORM.

Buyer	Date	Buyer	Date
THE SELLER MAY DISCLOSE ADDITIONAL INFORMATION NOT REQUESTED OF THIS FORM AND MAY RESPOND TO ADDITIONAL INQUIRIES OF THE BUYER.			
Section 3.			
<p>(1) In addition to the information specified in Section 2 of this administrative regulation, the seller's disclosure of property conditions form set out in it shall also include the following additional information:</p> <p>(a) The property address, which shall appear at the top of each page of the form; and</p> <p>(b) The initials of all parties who sign the form, including the date and time for the initialing, all of which shall appear at the bottom of each page of the form.</p> <p>(2) If the property that is the subject of the seller disclosure of property form is listed, the listing agent shall solicit the initials of all property owners-sellers and the date and time for the initialing at the time he or she executes any listing agreement or similar agreement by which a licensee intends to market the property.</p> <p>(3) If the property that is the subject of the seller disclosure of property condition form is not listed, any licensee involved in the transaction shall solicit:</p> <p>(a) The initials of all property owners-sellers and the date and time for the initialing; and</p> <p>(b) The initials of all prospective buyers and the date and time for initialing.</p>			
<b>201 KAR 11:400. Agency disclosure requirements</b>			
RELATES TO: KRS 324.160(4)(e), (n)			
Section 1. Definitions.			
<p>(1) "Business relationship" means any arrangement whereby a licensee and a party have or had a mutual financial ongoing interest in any company, corporation, or other income-producing venture, including any prior representation by the licensee for the party's purchase or sale of real estate, but does not include the current real estate transaction.</p> <p>(2) "Commercial transaction" means a transaction other than the sale of a single-family residential property, multifamily property containing four (4) units or less, single-family residential lot, or agricultural property.</p> <p>(3) "Confidential information" means information that would materially compromise the negotiating position of a party or prospective party to a real estate transaction if disclosed to the other party.</p> <p>(4) "Contact" means discussion or correspondence between a licensee and an identified prospective party involving the licensee's services related to a mutually-contemplated real estate transaction.</p> <p>(5) "Delivery" means delivery of an item to a party or prospective party by:</p> <p>(a) Mail;</p> <p>(b) Facsimile transmission;</p> <p>(c) Electronic mail;</p> <p>(d) Messenger; or</p> <p>(e) Hand.</p> <p>(6) "Family relationship" means any known familial relationship between a licensee and party regardless of distance of the relationship.</p> <p>(7) "Party" means one represented by a real estate licensee;</p> <p>(8) "Personal relationship" means a platonic or nonplatonic friendship between a licensee and a party.</p> <p>(9) "Prospective party" means a person who:</p> <p>(a) Has contact with a licensee; and</p> <p>(b) Has not entered into a brokerage agreement with a licensee relative to the contemplated transaction.</p>		<p>(b) Entering a representation agreement or submitting an offer to, or on behalf of, a prospective party; and</p> <p>(c) The conclusion of the second contact between the licensee and a prospective party.</p>	
Section 2. The provisions of this administrative regulation shall not apply to a:		(2) The Agency Information and Disclosure Form shall provide:	
<p>(1) Sale of real estate at auction;</p> <p>(2) Property management of real estate; or</p> <p>(3) Commercial transaction.</p>		<p>(a) Relationships available between the licensee and prospective party in Kentucky;</p> <p>(b) The specific relationship proposed between the licensee and prospective party;</p> <p>(c) The name of the licensee completing the form, the name of the principal broker of the licensee, and the name of the licensee's real estate company;</p> <p>(d) The name of the prospective party; and</p> <p>(e) The signature and date of signing by the prospective party.</p>	
Section 3. Prospective Party Information.		(3) The licensee shall complete "Section B" of the "Agency Information and Disclosure Form" if dual agency is being offered to the party. If dual agency is being offered, the completed "Section B" shall be delivered to the party prior to an offer being submitted. "Section B" shall provide:	
<p>(1) A licensee shall complete Items 1-3 of "Section A" of the Agency Information and Disclosure Form and deliver it to a prospective party prior to:</p> <p>(a) Receiving confidential information from a prospective party relative to a mutually-contemplated real estate transaction;</p>		<p>(a) The name of the other party represented in the transaction by the licensee;</p> <p>(b) The address of the property that is the subject of the transaction;</p> <p>(c) An indication of whether the licensee:</p> <ol style="list-style-type: none"> <li>1. Is acting as a party to the transaction;</li> <li>2. Has any financial interest in the property that is the subject of the transaction; or</li> <li>3. Anticipates having any financial interest in the property that is subject to the transaction;</li> </ol> <p>(d) Whether any licensee acting as a dual agent has a personal, family, or business relationship with the other represented party to the dual agency;</p> <p>(e) An explanation, by the licensee serving in a dual agency capacity, of the personal, family, or business relationship with the other represented party;</p> <p>(f) The signature and signature date of the licensee; and</p> <p>(g) The signature and signature date of the party's consent to dual agency.</p>	
Section 4. Incorporation By Reference.		(4) (a) An "Agency Information and Disclosure Form" that has been developed by the broker or sales associate shall be submitted to the commission for approval.	
		<p>(b) The general counsel of the commission shall:</p> <ol style="list-style-type: none"> <li>1. Review the form;</li> <li>2. Make a recommendation to the commission that the form be approved or disapproved; and</li> <li>3. Inform the broker or sales associate of the commission's decision.</li> </ol>	
		(1) "Agency Information and Disclosure Form" (February, 2001) is incorporated by reference.	

- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

**201 KAR 11:410. Broker duties pursuant to designated agency**

RELATES TO: KRS 324.121, 324.160(3)

Section 1. Definitions.

- (1) "Confidential information" means information that:
- (a) Is provided to a designated agent by a seller or prospective buyer of real estate;
  - (b) Describes or affects the provider's negotiation, bargaining position or motivation;
  - (c) Is not required by law; and
  - (d) Will not constitute fraud or a dishonest dealing, if not disclosed.
- (2) "Designated agent" means a person designated pursuant to KRS 324.121(1).

Section 2. A principal broker who appoints a designated agent shall:

- (1) Require that all documents that contain confidential information relating to a client;
- (a) Be kept in an individual file maintained by the principal broker and accessed only by the principal broker or the designated agent appointed by the principal broker to represent the individual; and
  - (b) Not be accessible to another licensee except as required by KRS 324.160(3);
- (2) Implement a system to maintain confidential information. The system shall:
- (a) Prohibit an employee from assisting more than one (1) designated agent in the same transaction, if the designated agents represent different clients in that transaction;
  - (b) Prohibit discussions between a designated agent and client concerning confidential information of the client within the office unless the conversation occurs in an environment which allows appropriate privacy;
  - (c) Prohibit the disclosure of confidential information by office personnel and clerical staff; and
  - (d) Require notification to each client involved in a transaction, if the principal broker becomes aware of an unauthorized or inadvertent disclosure of confidential information relating to that transaction;
- (3) Require a licensee to disqualify himself from being appointed as a designated agent for a party if the agent has received confidential information concerning the other party to the transaction.

**201 KAR 11:420. Standards for internet advertising**

RELATES TO: KRS 324.117(6)

Section 1. A real estate company's Internet home page shall include the following information:

- (1) The company's full, nonabbreviated name as recorded with the Kentucky Real Estate Commission or the name of the real estate company's principal broker;
- (2) A statement indicating the principal broker is a Kentucky licensed real estate broker if the principal office location is outside of Kentucky; and
- (3) A street address and phone number for the company's principal office.

Section 2. A real estate Internet real property advertisement of a licensee, or offer or solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease shall include the name of the principal broker of the company with whom the licensee is affiliated pursuant to KRS 324.010(6) and 324.010(14) or the name of the real estate company with which the licensee's license is held.

Section 3. A nonprincipal broker real estate licensee's Internet home page shall include:

- (1) The licensee's name;

- (2) The principal broker with whom the licensee is affiliated or the name of the real estate company recorded with the Kentucky Real Estate Commission with which the licensee's license is held;
- (3) A statement indicating the licensee holds a Kentucky license to broker real estate if the licensee's principal business location is outside Kentucky;
- (4) The regulatory jurisdiction of the licensee's principal business address; and
- (5) A street address and phone number for the licensee's principal business location.

**201 KAR 11:430. Procedure for criminal records background check – disciplinary action against licensees for acts committed before or during the application process**

RELATES TO: KRS 324.045(4), 324.990, 28 CFR 16.30 to 16.33

Section 1.

- (1) Prior to taking a licensure examination, an applicant shall request a copy of the applicant's Federal Bureau of Investigation identification record from the Federal Bureau of Investigation pursuant to the provisions of 28 CFR 16.30 to 16.33.
- (2) An applicant seeking licensure through a reciprocal agreement shall request the Federal Bureau of Investigation identification record prior to applying for licensure with the Kentucky Real Estate Commission.

Section 2.

- (1) Upon receipt of the Federal Bureau of Investigation identification record, the applicant shall:
- (a) Submit the original Federal Bureau of Investigation identification record to the Real Estate Commission within five (5) days of receipt of the Federal Bureau of Investigation identification record if the identification record reveals:
    - 1. Any felony conviction regardless of when the conviction occurred; or
    - 2. A misdemeanor conviction within the five (5) years previous to the applicant's receipt of the Federal Bureau of Investigation identification record;
  - (b) Submit the Federal Bureau of Investigation identification record to the Real Estate Commission at the time of application if the Federal Bureau of Investigation identification record does not indicate:
    - 1. A felony conviction at any time; or
    - 2. A misdemeanor conviction within the previous five (5) years.
- (2) If the Real Estate Commission receives a Federal Bureau of Investigation identification record which reveals a felony conviction, or a misdemeanor conviction within the previous five (5) years, the Real Estate Commission shall investigate the conviction and may, at its discretion, investigate any charges that are revealed by the Federal Bureau of Investigation identification record or any other evidence of dishonesty, untruthfulness, or bad reputation of the applicant.
- (3) Following the completion of the investigation, the Real Estate Commission shall review the investigation report and the Real Estate Commission shall:
- (a) Order the applicant to appear before the commission for a hearing pursuant to KRS 324.045 and Chapter 13B; or
  - (b) Allow the applicant to proceed with the licensure application without a hearing if the Real Estate Commission determines the conviction does not necessitate a hearing pursuant to KRS 324.045.
- (4) (a) If a hearing is ordered under subsection (3)(a) of this section, the applicant shall appear before the Real Estate Commission or the Real Estate Commission's authorized representative pursuant to KRS Chapter 13B.
- (b) The hearing shall determine whether the applicant meets the standards of KRS 324.045 and shall consider:
- 1. The nature of the crime;
  - 2. Whether the crime indicates the applicant's untrustworthiness or incompetence in a manner that threatens the public interest;

3. Any evidence of honesty, truthfulness, and good reputation of the applicant;
  4. Evidence of rehabilitation by the applicant since the crime;
  5. Whether the applicant has received written confirmation from a principal broker willing to accept the applicant as an associate upon licensure;
  6. Whether the applicant is currently under probation, parole, or other state supervision or reporting requirements as a condition of any criminal sentence; and
  7. Other information relevant to the applicant's fitness to broker real estate.
- (5) If an authorized representative conducts the hearing, the authorized representative shall recommend to the Real Estate Commission whether the applicant meets the standards of KRS 324.045. The Real Estate Commission may accept the recommendation, reject the recommendation and enter a separate order, or remand to the representative for further proceedings in accordance with KRS Chapter 13B.
- (6) (a) 1. Following the hearing, the Real Estate Commission shall either approve or deny the application and notify the applicant of its decision along with a brief, written explanation of the reasons for its decision.
2. The applicant may proceed with the licensure application if the Real Estate Commission states in its order that the applicant may proceed with the licensure application.
3. The Real Estate Commission's order shall provide an expiration date by which the applicant shall take the licensure examination.
4. If the Real Estate Commission denies the application, the Real Estate Commission shall indicate in its order, if and when, the applicant will be eligible to submit a subsequent licensure application.
- (b) If the Real Estate Commission's order indicates the applicant may proceed with the licensure application, the applicant shall submit a copy of the order to the Real Estate Commission with the licensure application.
- (c) Failure to produce the order shall constitute grounds to deny the licensure application.
- (d) The application of an applicant who is, at the time of filing, under probation, parole, or other state supervision or reporting requirements ordered by any court of the commonwealth may be denied by the commission, at its discretion. If the commission denies an application based upon one or more of these grounds, the applicant may reapply for licensure after the period of probation, parole, or other state supervision or reporting requirements has ended.
- (7) An issued license shall be revoked if, while an applicant, the licensee:
- (a) Received a Federal Bureau of Investigation identification report indicating a felony conviction, or a misdemeanor conviction in the previous five (5) years and the applicant did not submit the report to the Real Estate Commission for investigation as required by subsection (1)(a) of this section;
- (b) Failed to request the report as required by this section; or
- (c) Failed to submit the identification report with the application for licensure, as required by subsection (1)(b) of this section.
- (8) If an applicant has engaged in any unlicensed brokerage activity within this commonwealth, the applicant shall, prior to the issuance of any license by the commission, disgorge all fees earned or received by him or her as a result of the unlicensed brokerage activity.

## **201 KAR 11:440. Personal assistant duties**

RELATES TO: KRS 324.010(4), 324.030(6)

Section 1. A nonlicensed personal assistant, office worker, or clerical worker shall not:

- (1) Negotiate terms of a real estate transaction or real estate brokerage agreement;
- (2) Complete offers or contracts relative to a real estate transaction;
- (3) Disclose information that is available to a real estate licensee but is not available to the general public;
- (4) Attend a real estate closing except to assist a licensee present at the closing;
- (5) Access information which requires membership in an industry trade group if the supervising licensee is not a member of the industry trade group;
- (6) Write or place advertisements without review by a licensee;
- (7) Express material opinions on any aspect of a real estate transaction to anyone other than the supervising licensee;
- (8) Interpret real estate contractual terminology for others;
- (9) Represent to others that he has a real estate license; or
- (10) Perform any activity which requires a real estate license.

Section 2. A nonlicensed personal assistant, office worker, or clerical worker may perform the following tasks:

- (1) Distribute literature, serve refreshments, greet guests, and procure guest signatures on a sign-in book at an open-house, without a supervising licensee present at the open house if:
  - (a) The seller or lessor provides written consent for the assistant to serve in this capacity; and
  - (b) The supervising licensee directs the assistant to serve in this capacity;
- (2) Provide the following general public information to others pursuant to KRS 324.030(6):
  - (a) Whether real estate is listed with the real estate company;
  - (b) Whether real estate is under contract with the company;
  - (c) Whether a real estate transaction has closed;
  - (d) The listing price of the real estate;
  - (e) Other information about the real estate if:
    1. The information is provided in writing;
    2. Disclosure is approved by the supervising licensee; and
    3. Disclosure does not violate the licensee's fiduciary duties to his client;
- (3) Appear in advertisements and have his or her name appear in advertisements if the advertisement does not indicate or imply the assistant has a real estate license;
- (4) Contact others to set appointments on behalf of the supervising licensee;
- (5) Receive confidential information from a consumer relative to a real estate transaction if the information is communicated only to the supervising licensee;
- (6) Copy a key related to a real estate transaction at the direction of the supervising licensee; or
- (7) Unlock real estate for any purpose relative to the real estate transaction if:
  - (a) The supervising licensee receives the consent of the owner or lessor;
  - (b) The assistant answers no questions about the real estate other than as specifically allowed by this administrative regulation or statute; and
  - (c) The assistant does not show the real estate to a consumer.

Section 3. Supervision of a nonlicensed personal assistant, office worker, or clerical worker shall require:

- (1) A principal broker to assign supervision duties for each assistant to at least one (1) licensee, which may be the principal broker, of the company;
- (2) The principal broker to require all assistants working for a licensee of the company to be informed of the requirements of this administrative regulation and the provisions of KRS 324.030;
- (3) A principal broker to establish a policy by which a supervising licensee provides training for assistants in a manner reasonably adequate to ensure compliance with this administrative regulation;



- (4) A supervising licensee to provide reasonable supervision of assistants in a manner which shall ensure compliance with this administrative regulation; and
- (5) A supervising licensee to be reasonably accessible to assistants in a manner which allows the assistant to contact and locate the licensee concerning pending transactions.

### **201 KAR 11:450. Broker management course**

RELATES TO: KRS 324.046(1)(a)

Section 1. Every applicant for a broker's license shall first attend a three (3) academic credit hour brokerage management skills course as part of his or her twelve (12) hours of broker prelicense education real estate courses pursuant to KRS 324.046(1)(a).

Section 2. The brokerage management skills course shall:

- (1) Satisfy three (3) hours of the applicant's twelve (12) hours of real estate courses required to become a broker;
- (2) Be a three (3) hour comprehensive review of all the skills necessary to run a brokerage office in accordance with:
  - (a) KRS Chapter 324;
  - (b) 201 KAR Chapter 11;
  - (c) Common law and federal law relating to real estate; and
  - (d) The standards of practice for a real estate broker pertaining to adequate supervision of all sales associates affiliated with the broker;
- (3) Require each student successfully completing the course to develop a sample business plan, a sample financial plan and an office policy and procedure manual; and
- (4) Require each successful student to take a comprehensive, closed-book examination consisting of at least fifty (50) questions and to pass the test with a minimum score of seventy-five (75) percent. The examination shall be submitted to the commission for approval prior to use in the course. The commission shall review each proposed examination for content to ensure that each course topic is covered and tested. If certain areas are lacking, the commission shall issue recommendations as to how to improve the examination and shall allow the school thirty (30) days to resubmit the examination for approval.

Section 3. Instructors.

- (1) An instructor teaching this course shall have previous experience within the past five (5) years as a Kentucky approved instructor of prelicense courses.
- (2) Each instructor shall attend a commission-approved training program specifically designed for this course prior to teaching the course for the first time.
- (3) The commission shall maintain a list of dates and times when the mandated training program is conducted and provide the list to instructors upon request.
- (4) An instructor with the required experience who has completed the mandatory training program shall make a written request to the commission for approval to teach the course.
- (5) Following a recommendation from the education director, the commission shall consider the request and approve or disapprove each request.
- (6) The commission shall notify the instructor of its decision in writing.
- (7) In order to retain their approval to teach this course, an instructor shall attend all subsequent training programs that the commission deems necessary based upon changes in license laws and administrative regulations.

Section 4. Course Approval.

- (1) Course approval may be withdrawn by the commission if the instructor fails:
  - (a) To follow the prescribed outline;
  - (b) To require the students to develop a sample business and financial plan or a sample office policy and procedure manual;
  - (c) To require the students to take and pass a comprehensive examination and obtain a seventy-five (75) percent pass rate; or
  - (d) To attend training programs required by the commission.

- (2) Any school whose course approval has been withdrawn may apply to the commission for an opportunity to be heard. The commission shall make a decision as to reinstatement of course approval.

Section 5. Effective Date.

- (1) The effective date of this administrative regulation shall be September 1, 2002. Any broker applicant who will be taking the real estate examination on or after this date shall submit proof of completion of a brokerage management course as part of the required real estate course hours for a broker's license.
- (2) The commission shall accept credits for any brokerage management course that has been completed at an approved Kentucky proprietary school or an accredited college or university within the state of Kentucky if the course was taken within two (2) years prior to the effective date of this administrative regulation and the course, or a substantially similar course, has previously been accepted by the commission as prelicense education under KRS 324.046(1). The applicant shall provide a course completion certificate to the commission along with the request for approval.
- (3) The commission shall provide credit to an applicant who has completed at least a three (3) semester hour brokerage management course outside the state of Kentucky within the two (2) year period prior to the effective date of this administrative regulation in accordance with 201 KAR 11:210.

Section 6. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Brokerage Management Curriculum (March, 2001)"; and
  - (b) "Generally-Accepted Principles of Education (May, 1994)".
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m. (28 Ky.R. 2117; Am. 2329; eff. 5-16-2002.)

### **201 KAR 11:460 Minimum rating requirements for instructors**

RELATES TO: KRS 324.085

Section 1. All approved continuing education instructors shall:

- (1) Be approved by the Kentucky Real Estate Commission and be in compliance with the provisions of 201 KAR 11:175.
- (2) Enforce the Guidelines for Classroom Management as developed by the Commission as part of the continuing education program.
- (3) Comply with the Generally Accepted Principles of Education (GAPE) developed by the Real Estate Educators Association and adopted by the Kentucky Real Estate Commission as the standard for classroom presentation and incorporated by reference in 201 KAR 11:450.

Section 2. Evaluation of Instructors

- (1) Each continuing education provider shall distribute a Continuing Education Instructor Evaluation Form to each student and collect a Continuing Education Evaluation Form from each student at the end of the course.
- (2) Within ten days of course conclusion, the course provider shall deliver all Continuing Education Instructor Evaluation Forms to the Commission Education Director.
- (3) If a course provider fails to submit all forms completed by students and provided to the course provider, the Commission may suspend the course provider's approval.
- (4) All Continuing Education Evaluation Forms shall be reviewed by the Commission.
- (5) The Commission Education Director shall review the course approval percentage rating for each instructor;
- (6) An eighty-five (85)% approval rating is required in the categories of "Instructor Knowledge" and "Instructor Presentation".
- (7) The comments section of the Continuing Education Evaluation Forms will be reviewed for other remarks concerning the instructor's performance.
- (8) After a second rating lower than eighty-five (85)%, the Commission will notify the instructor and the course provider of the deficiency.

- (9) The next class taught by the instructor shall be monitored by a Commission representative. The Commission monitor shall submit a recommendation to the Commission as to whether the instructor should be allowed to continue to teach courses.
- (10) Based on the recommendation of the monitor, the evaluation score and the comments from the third class, a recommendation will be made to the Commission to:
  - (a) Take no further action;
  - (b) To suspend the approval of the instructor; or
  - (c) To place the instructor on probation pending the evaluation and review of a future class.
- (11) In the event the Commission issues a probationary order the Commission shall outline the length and terms of the probationary period as well as the date of the class to be monitored.
- (12) At the conclusion of the probationary period, the Commission Education Director shall recommend to the Commission whether the instructor's approval shall continue.
- (13) The Commission shall consider the Education Director's recommendations and determine whether the instructor's approval shall continue or be removed.
- (14) The Commission shall notify the instructor and the school of its decision in writing.
- (15) If probation has ended satisfactorily, the instructor's approval shall be reinstated.
- (16) If the Commission determines that instructor approval shall be suspended, the instructor shall not be allowed to teach any Commission-approved education courses unless approval is reinstated.
- (17) In any class with ten (10) or fewer participants for which the instructor receives at least one (1) evaluation below eighty-five (85)%, the Commission shall not consider the highest and lowest course approval percentage rating in order to ensure greater accuracy in the rating.
- (18) The annual recertification of instructors and continuing education courses shall include an in-depth review of the evaluations completed by the students and those of any monitor that may have been present for the class.
- (19) (a) Any instructor who has been suspended from teaching continuing education courses may apply for reinstatement by:
  1. Submitting an application for approval to the Commission;
  2. If the deficiency is in presentation, the instructor must attend an instructor development workshop approved by the Commission upon request;
  3. If the deficiency is in the subject matter, the instructor must attend a prescribed number of credit hours in that subject approved by the Commission upon request;
  4. Submitting proof of attendance at the required course;
  5. Providing written documentation of other steps taken to improve the instructor's knowledge and skills; and
 (b) After submission of the above documents and consideration by the Commission, the Commission shall approve or deny the instructor's request for reinstatement in its discretion.

### Section 3. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) Guidelines for Classroom Management, October 2001;
  - (b) Continuing Education Instructor Evaluation Form, October 2001.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, KY 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

### **371.010 Statute of frauds; Contracts to be written**

-- No action shall be brought to charge any person:....

- (6) Upon any contract for the sale of real estate, or any lease thereof for longer than one (1) year;

- (8) Upon any promise, agreement, or contract for any commission or compensation for the sale or lease of any real estate or for assisting another in the sale or lease of any real estate.

### **383.580 Security deposits**

- (1) All landlords of residential property requiring security deposits prior to occupancy shall be required to deposit all tenant's security deposits in an account used only for that purpose, in any bank or other lending institution subject to regulation by the Commonwealth of Kentucky or any agency of the U.S. Government. Prospective tenants shall be informed of the location of the separate account and the account number.
- (2) Prior to tendering any consideration deemed to be a security deposit, the prospective tenant shall be presented with a comprehensive listing of any then-existing damage to the unit which would be the basis for a charge against the security deposit and the estimated dollar cost of repairing such damage. The tenant shall have the right to inspect the premises to ascertain the accuracy of such listing prior to taking occupancy. The landlord and the tenant shall sign the listing, which signatures shall be conclusive evidence of the accuracy of such listing, but shall not be construed to be conclusive to latent defects. If the tenant shall refuse to sign such listing, he shall state specifically in writing the items on the list to which he dissents, and shall sign such statement of dissent.
- (3) At the termination of occupancy, the landlord shall inspect the premises and compile a comprehensive listing of any damage to the unit which is the basis for any charge against the security deposit and the estimated dollar cost of repairing such damage. The tenant shall then have the right to inspect the premises to ascertain the accuracy of such listing. The landlord and the tenant shall sign the listing, which signatures shall be conclusive evidence of the accuracy of such listing. If the tenant shall refuse to sign such listing, he shall state specifically in writing the items on the list to which he dissents, and shall sign such statement of dissent.
- (4) No landlord shall be entitled to retain any portion of a security deposit if the security deposit was not deposited in a separate account as required by subsection (1) of this section and if the initial and final damage listings required by subsections (2) and (3) of this section are not provided.
- (5) A tenant who disputes the accuracy of the final damage listing given pursuant to subsection (3) of this section may bring an action in District Court. Tenant's claim shall be limited to those items from which the tenant specifically dissented in accordance with the provisions of subsection (3) of this section, or except as otherwise provided, and if the tenant shall fail to sign the listing or specifically dissent in accordance with subsection (3) of this section, the tenant shall not be entitled to recover any damages under this section.
- (6) In the event a tenant leaves not paying his last month's rent and does not demand a return of his deposit, the landlord may, after thirty (30) days, remove the deposit from the account and apply any such excess to the debt owing.
- (7) In the event the tenant leaves not owing rent and having any refund due, the landlord shall send notification to the last known or reasonably determinable address, of the amount of any refund due the tenant. In the event the landlord shall not have received a response from the tenant within sixty (60) days from the sending of such notification, the landlord may remove the deposit from the account and retain it free from any claim of the tenant or any person claiming in his behalf.

### **207.250 Disclosure of HIV information in real estate transaction prohibited**

- (1) The fact that an occupant of real property is infected or has been infected with human immunodeficiency virus or diagnosed with acquired human immunodeficiency syndrome is not a material fact that shall be disclosed in a real estate transaction.

- (2) No cause of action shall arise against an owner of real estate or his agent, or any agent of a transferee of real property for failure to disclose to the transferee that an occupant of that property was infected with human immunodeficiency virus or diagnosed with acquired human immunodeficiency syndrome.

### **367.46951 Definitions for zero call list**

- (1) "Telephone solicitation" means:
- (a) A live or recorded communication sent by a telephone or message sent by a facsimile machine to a residential, mobile, or telephone paging device telephone number, including a call made by an automatic dialing or recorded message device, for the purpose of:
    - 1. Soliciting a sale of consumer goods or services, offering an investment, business, or employment opportunity, or offering a consumer loan to the person called;
    - 2. Obtaining information that will or may be used for the solicitation of a sale of consumer goods or services, the offering of an investment, business, or employment opportunity, or the offering of a consumer loan to the person called;
    - 3. Offering the person called a prize, gift, or anything else of value, if payment of money or other consideration is required in order to receive the prize or gift, including the purchase of other merchandise or services or the payment of any processing fees, delivery charges, shipping and handling fees, or other fees or charges; or
    - 4. Offering the person called a prize, gift, or other incentive to attend a sales presentation for consumer goods or services, an investment or business opportunity, or a consumer loan; or
  - (b) A live or recorded communication sent by a telephone, facsimile machine, mobile telephone, or telephone paging device in response to inquiries generated by unrequested notifications sent by the merchant to persons who have not previously purchased goods or services from the merchant or telemarketer or who have not previously requested credit from the merchant, to a prospective purchaser if the merchant or telemarketer represents or implies to the recipient of the notification that any of the following applies:
    - 1. That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification;
    - 2. That the recipient will receive a prize or gift if the recipient calls the merchant or telemarketer; or
    - 3. That if the recipient buys one (1) or more items from the merchant or telemarketer, the recipient will also receive additional or other items of the same or a different type at no additional cost or for less than the regular price of the items;
- (2) "Telephone solicitation" does not mean the following:
- (a) A telephone call made in response to an express request of a person called, unless the request was made during a prior telephone solicitation;
  - (b) A telephone call made to the debtor or a party to the contract in connection with the payment or performance of an existing debt or contract, the payment or performance of which has not been completed at the time of the call;
  - (c) A telephone call to any person with whom the telemarketer or merchant has a prior or existing business relationship, including but not limited to the solicitation of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made;
  - (d) A telephone call made by the following:
    - 1. A merchant or telemarketer located in Kentucky to a location outside of the Commonwealth of Kentucky;

2. A telephone call made by one (1) merchant to another;.....

### **367.46955 Prohibited telephone solicitation acts and practices**

It is a prohibited telephone solicitation act or practice and a violation of KRS 367.46951 to 367.46999 for any person making a telephone solicitation to engage in the following conduct . . .

- (15)(a) Making or causing to be made an unsolicited telephone solicitation call if the residential number for that telephone appears in the current publication of the zero call list maintained by the Office of the Attorney General, Division of Consumer Protection. Any holder of a residential telephone number may notify the division and be placed on a zero call list indicating the wish not to receive unsolicited telephone solicitation calls by notification to the division. The telephone numbers of persons requesting to be on the zero call list shall remain on the list until the person rescinds his or her name from the list;
- (b) The zero call list shall be updated, published, and distributed on a quarterly basis in electronic and hard copy and may be made available in other formats at the discretion of the division. After the publication of the list each quarter each telemarketing company, telemarketer, and merchant shall be deemed to be on notice not to solicit any person whose telephone number appears on the list. The list shall be made available to requesters either on a statewide or county by county basis; .....

### **40 KAR 2:075 Commonwealth of Kentucky zero call list**

... Section 2. Publication

- (1) Quarterly publication schedule. The Zero Call List shall be published according to the following schedule:
- (a) The first quarter shall be effective January 15-April 14, and it shall be published on December 15;
  - (b) The second quarter shall be effective April 15-July 14, and it shall be published on March 15;
  - (c) The third quarter shall be effective July 15-October 14, and it shall be published on June 15; and
  - (d) The fourth quarter shall be effective October 15-January 14, and it shall be published on September 15.
- (2) The Zero Call List shall be:
- (a) Available in accordance with Section 4 of this administrative regulation;
  - (b) Published on the Internet at website address [www.kycall0.com](http://www.kycall0.com); and
  - (c) Available in electronic and hard copy. A request for an electronic or hard copy of the Zero Call List shall require a minimum of five (5) business days notice to the division.

### **376.075 Engineers', architects', landscape architects', real estate brokers' and land surveyors' liens – When lien not required of real estate broker – Filing statement of amount claimed**

- (1) Any professional engineer, licensed architect, licensed landscape architect, real estate broker, or professional land surveyor who performs professional services or services as defined in KRS 322.010(4) for professional engineers, KRS 323.010(3) for architects, KRS 323A.010(3) for landscape architects, KRS 324.010(1) for real estate brokers, and KRS 322.010(10) for professional land surveyors shall have a lien on the building, structure, land, or project relative to which the services were performed, to secure the amount of the charges for services with interests as provided in KRS 360.040 and costs.
- (2) The provisions of KRS 376.010(1) and (2) shall determine when a lien created under this section shall take precedence over a mortgage or other contract lien or bona fide conveyance for value without notice.

- (3) No person who has not contracted directly with the owner or his agent shall acquire a lien under this section.
- (4) Any lien provided for under this section shall be dissolved unless the claimant, within six (6) months after he ceases to provide services, files in the office of the county clerk of the county in which the property is situated a statement of the amount due the claimant, with all just credits and setoffs known to him, together with a description of the property intended to be covered by the lien sufficiently accurate to identify it, the name of the owner, if known, and whether the services were furnished by contract with the owner or with a contractor or architect. This statement shall be subscribed and sworn to by the person claiming the lien or by someone in his behalf.
- (5) Any lien created under this section shall be dissolved unless an action is brought to enforce the lien within twelve (12) months from the day of filing the statement in the clerk's office as required by subsection (4) of this section. If the lien holder complies with all filing requirements under this section, and does so within the time fixed, his lien shall be valid and effective against any creditor of, or bona fide or other purchaser from, the owner of the property.
- (6) The provisions of this section shall in no way abridge or conflict with the provisions of KRS 376.210 which provide for liens on public improvements, and any potential lien or valid lien of a professional engineer, architect, landscape architect, real estate broker, or professional land surveyor on a public improvement shall be governed by KRS 376.210.
- (7) No real estate broker shall acquire a lien under this section relative to newly constructed residential real estate unless the purchaser has agreed in writing to directly compensate such broker for performing brokerage services related to the transaction.
- (8) No real estate broker shall acquire a lien under this section unless:
  - (a) The owner or the owner's authorized agent:
    - 1. Lists the subject property with the broker under the terms of a written agreement to sell, lease, or otherwise convey any interest in the subject property; or
    - 2. Agrees in a written agreement to pay the broker a fee for his or her services as a buyer's representative; and
  - (b) The broker or the broker's affiliated sales associate provides licensed services that result, during the term of a written agreement described in paragraph (a) of this subsection, in the procuring of a person or entity ready, willing, and able to purchase, lease, or otherwise accept a conveyance of the property or any interest in the property:
    - 1. Upon terms contained in a written agreement described in paragraph (a) of this subsection; or
    - 2. Upon terms that are otherwise acceptable to the owner or the owner's authorized agent as evidenced by a written agreement to convey any interest in the property signed by the owner or owner's authorized agent.